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Comments

COMMENCEMENT OF THE DELAYS FOR THE TAKING OF DEVOLUTIVE AND SUSPENSIVE APPEALS

A cursory examination of our present statutory authority will convince the reader of the confusion in the Louisiana procedural law on the subject of the delays for taking devolutive and suspensive appeals. The purpose of this comment is to indicate to the practicing attorney the areas of greatest difficulty and to suggest the pattern of Louisiana jurisprudence on the subject.

The initial problem is to determine the point from which

the delays are to be computed. Article 575 of the Code of Practice[1] indicates that the ten days, exclusive of Sundays, normally allowed[2] for taking a suspensive appeal, are counted from the day on which the party cast is given notice of the judgment rendered, where "such notice is required by law to be given."[3] The article then explains that when "the defendant has had personal service to appear and file his answer, or when judgment has been rendered in a case after answer filed by the defendant, or by his counsel, the party cast in the suit shall be considered duly notified of the judgment by the fact of its being *signed* by the judge." (Italics supplied.)[4] The only case not envisioned by this enumeration is the confirmation of a default based upon domiciliary service. Considerable confusion had existed in our law as to the necessity for actual notice of this type of default judgment,[5] but it is now well settled that in an appealable case of this nature, actual notice is in fact necessary.[6] It is clear, therefore, that the signing of the judgment is one of the salient factors in the computation of the delay for taking a suspensive appeal.

This rule would seem to be contradistinguished from that of Article 593,[7] under which the year normally allowed[8] for taking a devolutive appeal is computed from the day the final judgment is "rendered." A survey of the cases does not bear out this distinction, for it appears well settled that no right of appeal lies unless and until the judgment is *signed*.[9] A 1943 case[10] states in

1. Art. 575, La. Code of Practice of 1870, as last amended by La. Act 289 of 1926.

2. Where the judgment appealed from is one decreeing a divorce, the period is extended to thirty days, not including Sundays. Art. 573, La. Code of Practice of 1870.

3. The applicable portion of the article reads:

"If the appeal has been taken within ten days, not including Sundays, after the judgment has been notified to the party cast in the suit, when such notice is required by law to be given, it shall stay execution and all further proceedings, until definitive judgment be rendered on the appeal...." Art. 575, La. Code of Practice of 1870, as last amended by La. Act 289 of 1926.

4. Art. 575, La. Code of Practice of 1870, as last amended by La. Act 289 of 1926.

5. Taylor v. Woodward, 25 La. Ann. 212 (1873); Hoffman v. Howell, 27 La. Ann. 304 (1875); Francis v. Martin, 28 La. Ann. 403 (1876); Mundy v. Phillips, 142 La. 180, 76 So. 602 (1917); cause of confusion explained in State ex rel. Mitchell v. Cohn Flour & Feed Co., 17 La. App. 108, 135 So. 385 (1931).

6. State ex rel. Mitchell v. Cohn Flour & Feed Co., 17 La. App. 108, 135 So. 385 (1931); Strange v. Albrecht, 176 So. 700 (La. App. 1937).

7. La. Code of Practice of 1870, as last amended by La. Act 72 of 1942.

8. It is to be noted, however, that where the appeal is from a judgment deciding the validity of a bond issue, this period is reduced to thirty days. Art. 593, La. Code of Practice of 1870, as last amended by La. Act 72 of 1942.

9. Succession of Savoie, 195 La. 433, 196 So. 923 (1940); Brock v. Police Jury of Rapides Parish, 198 La. 787, 4 So.(2d) 829 (1941); Foster v. Kaplan Mill, 203 La. 245, 13 So.(2d) 850 (1943).

10. Foster v. Kaplan Rice Mill, 203 La. 245, 13 So.(2d) 850 (1943).

dictum that "a judgment is not rendered until it is signed by the district judge." This would afford rationalization for the court's interpretation of these two articles, but is unworkable in computing the time for making applications for new trial or rehearing.[11]

Although Articles 575 and 593[12] speak of *signed* and *rendered,* and the courts have interpreted *rendered* to mean *signed,* it is not the "signing" but the "effective date" of the signing which determines the commencement of the allowable delays.[13] A study of many cases establishes that the signing of a judgment is not "effective" until the expiration of the delays allowed for making motions for a new trial or rehearing, or until the denial of such motions timely made.[14] It is evident that the computation of the periods allowed for taking appeals is bottomed upon the prior determination of the periods allowed for the making and disposition of the above named motions.

Article 558[15] purports to state the law applicable to the delay for moving for a new trial and provides in part that the new trial "shall be prayed for and passed on *before the adjournment* of the court." With the passage of time, the law has been altered, but the codal authority remains unchanged. The court has clearly stated[16] that a motion for a new trial need not be made prior to the adjournment of the court for the "term." This is in the teeth of Article 558,[17] but it is in complete conformity with the more recent expressions[18] of the legislature. The matter is further complicated by the provision in Article 558[19] that a motion for a new trial may be made within three judicial days of *rendition.*

11. It will be later explained in the body of this article that the delays for taking an appeal do not run concurrently with those for moving for new trial and rehearing. The delays for moving for new trial and rehearing must elapse prior to the commencement of the delays for taking an appeal.

12. La. Code of Practice of 1870.

13. Mercer v. Natchez, B. & S. Ry., 136 La. 187, 66 So. 774 (1914); State ex rel. Wellman v. Bell, Judge, 142 La. 662, 77 So. 493 (1918); Ryland v. Harve M. Wheeler Lumber Co., 146 La. 787, 84 So. 55 (1919); Saint v. Allen, 169 La. 1046, 126 So. 548 (1930); Auto-Lec Stores v. Ouachita Valley Camp No. 10, W.O.W., 185 La. 876, 171 So. 62 (1936); Succession of Lissa, 194 La. 328, 193 So. 663 (1940).

14. Ibid. McMahon, Louisiana Practice (Supp. 1949) 96, n. 9.1. The proposed revision of the La. Rev. Stats. of 1870, §§ 4212-4214, provides for legislative recognition and approval of this line of authority.

15. La. Code of Practice of 1870.

16. Rivers and Rails Terminals v. Louisiana Ry. & Nav. Co., 160 La. 931, 107 So. 700 (1926); Herold v. Hefferson, 172 La. 315, 134 So. 104 (1927 and 1931).

17. La. Code of Practice of 1870.

18. La. Act 163 of 1898, § 5, as amended by La. Act 40 of 1904 [Dart's Stats. (1939) § 1503] and La. Act 247 of 1908 [Dart's Stats. (1939) § 2044].

19. La. Code of Practice of 1870.

The courts have consistently held that a motion coming after rendition, but prior to signature, is timely made.[20]

Article 558[21] states that new trials may be prayed for within *three judicial days.* As a matter of fact, this provision is applicable only to the Parish of Orleans, for the legislature has since provided that in parishes other than Orleans, a judgment must be signed *within three calendar days,* during which time a motion for a new trial may be timely made.[22] This presents the anomalous situation that judgments within the Parish of Orleans are to be signed *after three judicial days,*[23] and judgments outside of the Parish of Orleans are to be signed *within three calendar days.* Fortunately, our courts have not insisted upon a strict compliance with the letter of these peculiar provisions. A judgment that is rendered in the Parish of Orleans, but signed within the prohibited period, is not for this reason void, but is merely ineffectual until the lapse of the prescribed delay.[24] Conversely, no nullity attaches merely because a judgment rendered in a parish other than Orleans is signed after the prescribed delay. Such a judgment assumes validity upon signature.[25]

It is well established that a motion for a new trial may be timely made at any time prior to the signing of the judgment.[26] This rule pertains whether or not the signing of the judgment was timely, but it is to be remembered that there are instances in which these motions can be effectively made after signature.[27]

20. W. L. Pace Piano Co. v. Louisiana Seeburg Piano Co., 154 La. 749, 98 So. 174 (1923); Rivers and Rails Terminal v. Louisiana Ry. & Nav. Co., 160 La. 931, 107 So. 700 (1926); Wallace v. Martin, 166 So. 874 (La. App. 1936). The Council of the Louisiana State Law Institute has recommended that this line of authority be incorporated into the proposed revision of the Louisiana Revised Statutes of 1870.

21. La. Code of Practice of 1870.

22. La. Act 163 of 1898, § 5, as amended by La. Act 40 of 1904 [Dart's Stats. (1939) § 1503].

23. Art. 546, La. Code of Practice of 1870.

24. Succession of Carraby, 23 La. Ann. 110 (1871); Succession of Lissa, 194 La. 328, 193 So. 663 (1940).

25. State ex rel. Wellman v. Bell, Judge, 142 La. 662, 77 So. 493 (1918); Saint v. Allen, 169 La. 1046, 126 So. 548 (1930).

26. See cases cited supra note 20.

27. E.g., a judgment signed within the period allowed by law for the making of motions for new trial is not effective until the expiration of this delay. Hence a motion coming after signature, but within the prescribed delay, would be timely filed. Saint v. Allen, 169 La. 1046, 126 So. 548 (1930). Cf. Succession of Lissa, 194 La. 328, 193 So. 663 (1940).

It is to be noted that although the proposed revision of the Louisiana Revised Statutes of 1870 (Title 13, § 4213) provides that in the Parish of Orleans, applications for new trial or rehearing must come prior to the signing of the judgment, the notes of the Reporter for the Council of the Louisiana State Law Institute indicate that this should not be interpreted as a desire to alter the present jurisprudential rule that a motion coming after signature, but within the prescribed delay, is timely filed. See Succession of Lissa, 194 La. 328, 193 So. 663 (1940).

The liberal policy of our courts has avoided much of the confusion that would otherwise have resulted from the unfortunate distinction here made between the Parish of Orleans and the other parishes throughout the state, but the distinction is of prime practical importance in one single instance. Where the three calendar days and the three judicial days do not in fact coincide, the signing of the judgment on or before the third day will deprive the litigant in a parish other than Orleans of the longer interval to which he would have been entitled in the Parish of Orleans.

A 1926 act provides that motions for rehearing may be made within three *judicial* days of rendition.[28] It is to be stressed that this delay applies alike to *all* parishes. It must necessarily follow that in the Parish of Orleans a litigant is allowed at least three judicial days during which he may move for either a new trial or a rehearing. On the other hand, the litigant in a parish other than Orleans has only three calendar days during which he may move for a new trial (which period may be extended by a late signing of the judgment) although he has at least three judicial days during which he may move for a rehearing. These two periods begin to run concurrently.

The delays for taking devolutive and suspensive appeals run from the "effective date" of the signing of the judgment. It has been seen that the signing of a judgment is not effective until the expiration of the delays for making motions for new trial or rehearing, or from the denial of such motions timely made. Since the period allowed for motions for rehearing must consume *at least* three judicial days, it is evident that this period must elapse between the rendition of judgment and the commencement of the delays for taking appeals. One must next determine the point from which these three judicial days are to be computed.

Normally, the period for moving for a new trial or rehearing is computed from the *rendition* of judgment,[29] but two exceptions appear in Article 543.[30] Where a judgment is signed in the parish

28. La. Act 10 of 1926 [Dart's Stats. (1939) §§ 1480-1482]. The proposed revision of the Louisiana Revised Statutes of 1870 (Title 13, § 4213) provides that in parishes other than Orleans, the delay for filing motions for rehearing be reduced from three judicial to three calendar days.

29. Art. 558, La. Code of Practice of 1870; La. Act 10 of 1926 [Dart's Stats. (1939) §§ 1480-1482].

30. La. Code of Practice of 1870. The proposed revision of the Louisiana Revised Statutes of 1870 (Title 13, § 4213) provides that in parishes other than Orleans, an application for new trial or rehearing must be filed before the judgment is signed, or within three days of rendition. The notes of the Reporter for the Council of the Louisiana State Law Institute indicate that this is not intended to in any way conflict with the provisions of Articles

other than the one in which the cause is tried, the delays for making a motion for a new trial or for taking an appeal[31] do not commence to run until notice of the signing of the judgment is *served* upon the party cast.[32] A recent act[33] furnishes us with the second exception, for it provides that by the deposit of a small fee a nonresident of the parish in which the cause is pending may secure written notice of the rendition of any judgment. By this device, the nonresident will postpone the commencement of the delays for taking a new trial or appeal[34] until three days after the mailing of the notice of rendition.

Certain conclusions may be drawn from the above discussion, and it is believed that the following represents the pattern of the present Louisiana law:

1. The delays for taking devolutive and suspensive appeals are computed from the "effective date" of the signing of the judgment.[35]

2. If the judgment is signed after the expiration of the delays allowed for motions for new trials or rehearing, and after the disposition of such motions timely made, the "effective date" of the signature is the date upon which the judgment was actually signed.

3. If the judgment is signed within the period allowed for moving for new trial or rehearing, and no such motion has been timely made, the "effective date" of the signature is the date of

546 and 575 of the Louisiana Code of Practice of 1870, but is a mere restatement of the general rule that the delays for moving for new trial or rehearing are computed from *rendition*.

31. Although this article refers only to *new trial*, it is believed that it will be interpreted to include both new trial and rehearing.

32. Art. 543(1), La. Code of Practice of 1870, as amended by La. Act 302 of 1942.

33. La. Act 302 of 1942 which amended Art. 543, La. Code of Practice of 1870.

34. See supra note 31.

35. When the judgment in question is the confirmation of a default based upon domiciliary service, exceptions to these principles may arise. It is well settled that in such cases, the period for taking a suspensive appeal commences to run from the date of actual notice to the party cast or the judgment rendered. See cases cited note 6, supra. Two early cases based their decisions on the same language as that found in the present Art. 575, La. Code of Practice of 1870, and decided that the period for taking a devolutive appeal did not begin to run in such cases until the date of actual notice. Taylor v. Woodward, 25 La. Ann. 212 (1873); Hoffman v. Howell, 27 La. Ann. 302 (1875). A doubt arises as to the computation of the delays for moving for new trial and rehearing in such cases, but it would appear that the general rules attach, and that the computation of these delays is not affected by the fact that the judgment in question is the confirmation of a default based upon domiciliary service.

the expiration of the three judicial days allowed for moving for a rehearing.

4. If the judgment is signed prior to the disposition of timely motions for new trial or rehearing, and these motions are not disposed of until after the third judicial day, the "effective date" of the signature is the date of the disposition of such motions.

5. With the exception of the two instances provided for in Article 543,[36] the delays allowed for motions for new trial and rehearing are computed from the date of the rendition of the judgment.[37]

GEORGE W. PUGH

JUDICIAL ATTEMPTS AT UNIFORM DIVORCE POLICY

Divorce is an omnipresent fact which cannot be ignored. From the legal viewpoint, a problem arises when a state is forced to recognize the divorce of a sister state which contravenes the public policy of the recognizing state. At first glance it might seem that this is an unwarranted projection of the policies of one state, which has lenient divorce laws, into a sister state where divorce is virtually impossible. Yet, irrespective of the facility with which the divorce is obtained, if that divorce is not recognized everywhere, there results a dangerous instability in personal status and its incidents. In recent years the United States Supreme Court has expanded the area in which recognition of divorce decrees is required until with its latest pronouncement on the subject—that where there has been opportunity to litigate the jurisdictional issue of domicile, the recognizing state must give full faith and credit, without itself inquiring into the jurisdictional issue—it may have penetrated too deeply to extricate itself with grace.[1]

36. La. Code of Practice of 1870, as amended by La. Act 302 of 1942.

37. It has already been explained that although this article mentions only *new trial*, it is believed that it would be interpreted to include the delays for both new trial and rehearing.

1. Sherrer v. Sherrer, 334 U.S. 343, 68 S.Ct. 1087, 92 L.Ed. 1429 (1948); Coe v. Coe, 334 U.S. 378, 68 S.Ct. 1094, 92 L.Ed. 1451 (1948). For a discussion of these cases, see Carey and MacChesney, Divorces by the Consent of the Parties and Divisible Divorce Decrees (1948) 43 Ill. L. Rev. 608; Merrill, The Utility of Divorce Recognition Statutes in Dealing with the Problem of Migratory Divorce (1949) 27 Texas L. Rev. 293; Reese and Johnson, The Scope of Full Faith and Credit to Judgments (1949) 49 Col. L. Rev. 153; Notes (1948) 15 Brooklyn L. Rev. 165; (1948) 23 Tulane L. Rev. 269; (1948) 1 Okla. L. Rev. 287; (1949) 14 Mo. L. Rev. 103; Paulsen, Migratory Divorce: Chapters III and IV (1948) 24 Indiana L.J. 25.

See also Rice v. Rice, 9 C.C.H., U.S.S.C. Bull. 1253, No. 117 (April 18, 1949).